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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 8.2.2006

CORAM

THE HONOURABLE MR. JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MR. JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (A) No.92 of 2003

Commissioner of Income Tax
Coimbatore. .. Appellant

Vs.

M/s.Lakshmi Mills Co. Ltd
Coimbatore. .. Respondent

PRAYER: Tax Case Appeal under Section 260A of the Income Tax Act 1961 against the order of the Income Tax Appellate Tribunal, Madras `C' Bench dated 24.3.2003 in ITA No.2772/Mds/94 for the assessment year 1991-92.

For Appellant : Mr.N.Muralikumaran
Senior Standing Counsel
for Income Tax Cases
For Respondent : Mr.M.P.Senthil Kumar

J U D G M E N T
(Delivered by P.D.DINAKARAN,J.)

The above tax case appeal is directed against the order of the Income-tax Appellate Tribunal dated 24.3.2003 in ITA No.2772/Mds/94.

2.1. The relevant facts may be noticed in brief: The Revenue is the appellant. The assessment year involved is 1991-92. The assessee filed return of income admitting an income of Rs.1.58 Lakhs. The Assessing Officer (i) added the excise duty on the raw materials, as also the excise duty payable on the finished goods in respect of the closing stock; (ii) disallowed the speculative loss that arose on account of sale of units within one month of purchase; and (iii) disallowed the dividend received from the units

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till the date of sale on the ground that it was a speculative income and had set off the speculative loss against the same.

3. On appeal at the instance of the assessee, the Commissioner of Income-tax (Appeals) allowed the appeal on the above issues. On further appeal by the Revenue, the Tribunal confirmed the order of the Commissioner of Income Tax (Appeals).

4. The aggrieved Revenue preferred the present appeal raising the following substantial questions of law:

> "(i) Whether in the facts and circumstances of the case, the Tribunal was right in holding that excise duty on raw materials used in the closing stock as well as on the finished goods will not form part of the value of the closing stock?
>
> (ii) Whether in the facts and circumstances of the case, the Tribunal was right in holding that loss on account of sale of the unit within one month of its purchase is not a speculative loss? and
>
> (iii) Whether in the facts and circumstances of the case, the Tribunal is right in allowing the deduction under Section 80M on the dividend received from the units till date of the sale?"

5.1. With respect to the first question of law, viz., whether in the facts and circumstances of the case, the Tribunal was right in holding that excise duty on raw materials used in the closing stock as well as on the finished goods will not form part of the value of the closing stock, it is fairly submitted by the learned counsel for the appellant that the issue raised in the above question is covered against the Revenue by the decision of this Court in Commissioner of Income Tax V. Wheels India Ltd., [2005] 275 ITR 319 wherein a Division Bench of this Court, in which one of us was a party (P.D.DINAKARAN,J.), held as follows:

> "The object of Section 80HHC is required to be kept in mind while considering that section. The general definition of the word "turnover" or the definition under the sales tax laws or the case law dealing with the definition of turnover under the State levy cannot be imported into Section 80HHC of the Act, particularly, when such expressions are incorporated and explained in the provision itself. Sales tax and excise duty are not to be included in the total turnover while computing the deduction under Section 80HHC."

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5.2. In the above said decision, the decision of Bombay High Court reported in CIT V. Sudarshan Chemicals Industries Limited, [2000] 245 ITR 769 was also referred, wherein it has been held as follows:

> "That the total turnover cannot include the sales tax and the excise duty and total turnover should be restricted only to such receipts which have an element of profit in it and it would be only the sale price which should be the relevant figure."

5.3. In the light of the above proposition of law, we find no infirmity in the order of the Tribunal on this issue. Accordingly, the first question of law raised in this appeal is answered against the Revenue and in favour of the assessee.

6.1. With respect to the second question of law, viz., whether in the facts and circumstances of the case, the Tribunal was right in holding that loss on account of sale of the unit within one month of its purchase is not a speculative loss, it is fairly conceded by the learned counsel for the Revenue that the issue raised in this question is covered against the Revenue by the decision of this Court in APOLLO TYRES LTD. Vs. COMMISSIONER OF INCOME TAX, [2002] 255 ITR 273, wherein it is held as under:

> "Even though section 32(3) of the Unit Trust of India Act, 1963, creates a fiction to make the UTI a deemed company and distribution of income received by the unitholder a deemed dividend for the purposes of the Income-tax Act, by virtue of those provisions it cannot be said that the section also makes the unit of the UTI a deemed share. The deeming provision in section 32(3) should be confined only to deeming the UTI a company and the income from units a dividend. In the absence of any specific deeming provision in regard to the units as shares it would be erroneous to extend the provisions of section 32(3) for the purpose of holding the unit a share.
>
> Accordingly, that buying and selling of units by the assessee-company could not be treated as a speculative business. The Explanation to section 73 of the Income-tax Act did not apply. Loss in buying and selling of units of the UTI was business loss not speculation loss."

6.2. Following the aforesaid decision of the Apex Court, we do not find any infirmity in the order of the Tribunal and as such, we uphold the same.

7.1. With respect to the third question of law, viz., whether in the facts and circumstances of the case, the Tribunal is right in

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allowing the deduction under Section 80M on the dividend received from the units till date of the sale, Mr.N.Muralikumaran, learned Senior Standing Counsel for the Revenue fairly submits that the same is only consequential to second question of law.

7.2. As we have already held that income from units of Unit Trust of India was not a speculation income, the same has to be treated as inter-corporate dividend for the purpose of Section 80M of the Act. The decision of the Tribunal in this regard, in our considered opinion, needs no interference.

In the result, finding no infirmity in the order of the Tribunal, this tax case is dismissed. No costs.

sasi

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Assistant Registrar,
   Income-tax Appellate Tribunal,
   Rajaji Bhavan, Besant Nagar,
   Chennai 600 090 (with records)

2. The Secretary,
   Central Board of Direct Taxes, New Delhi

3. The Commissioner of Income-tax (Appeals),
   Coimbatore.

4. The Commissioner of Income Tax, Coimbatore.

5. The Deputy Commissioner of Income-tax,
   Spl.Range I, Coimbatore.

+1 CC to Mr.Philip George, Advocate, SR No.5604

MS(CO)
BG/28.2.2006

Tax Case (A) No.92 of 2003

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